IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9380 of 2005
With
SPECIAL CIVIL APPLICATION No. 18557 of 2005
To
SPECIAL CIVIL APPLICATION No. 18576 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VASANT VIRJI CHHEDA - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR RM CHHAYA for Petitioner(s) : 1,
MS ARCHANA RAWAL ASST GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 1 - 3.
MR JASWANT K SHAH for Respondent(s) : 4,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 14/12/2005

ORAL JUDGMENT

1. In this group of petitions the respective petitioners have challenged the legality and validity

of the order passed by the Deputy Collector (Earthquake), Bhachau dated 8.7.2004 in rejecting the applications submitted by the petitioners for compensation and / or financial assistance due to the damage caused to their residential property which came to be damaged and / or destroyed during the earthquake occurred in Kachchha on 26.1.2001.

2. As the common questions of law and facts arise in this group of petitions, all these petitions are being disposed of by this common judgment and order.

3. It is the contention on behalf of the petitioners that they were owner and occupier of the buildings i.e.Chheda Complex and Vijay Complex which came to be destroyed during the earthquake occurred in Kachchha on 26.1.2001. It is the contention on behalf of the petitioners that they are entitled to the financial assistance and other benefits, for which, they have submitted applications and as their applications were not decided, the petitioners preferred Special Civil Application No.17781 of 2003 which came to be disposed by the learned Single Judge

of this Court (Coram : A.R.Dave, J.) who by his order dated 12.3.2004 directed the respondent No.2 to decide and dispose off the applications as soon as possible and take final decision on the applications within a period of three months from the date of receipt of the said order. It is the contention on behalf of the petitioners that thereafter the petitioners even submitted all necessary documents / documentary evidences to prove their ownership and possession of the property in question such as indemnity bond, allotment letter, letter, affidavit, Rajachithhi, tax receipts, GEB bills, demand bills and the receipts etc, still the respondents No.3 has passed the impugned order rejecting their applications on the ground that the petitioners have not produced any sufficient documentary evidence to prove their ownership and possession and the residents in the property in question prior to the earthquake and only indemnity bond is not sufficient to prove possession.

4. Shri R.M.Chhaya, learned advocate appearing on behalf of the respective petitioners has vehemently

submitted that though the petitioners have produced all the necessary documentary evidences to prove their ownership and possession of the property in question such as indemnity bond, allotment letter, letter, affidavit, Rajachithhi, tax receipts, GEB bills, demand bills and the receipts etc. Still, the respondent No.3 has passed the impugned order which is nothing but non application of mind. Shri Chhaya, learned advocate has produced one list showing the particulars / documentary evidence produced before the respondent No.3 to prove their ownership and possession of the property in question. He has also submitted that he is having original documents, however, only with a view to not to burden the record of the present Special Civil Applications, he has not produced the same. He has also further submitted that without entering into the same, all the petitioners are ready and willing to furnish the documentary evidences afresh additionally so that the same may be considered by the respondent No.3.

5. Ms.Archana Raval, learned AGP appears on behalf of the respondent Nos.1 to 3 and Shri Jashvant K.

Shah, learned advocate appears on behalf of the respondent No.4. Affidavit-in-reply is also filed on behalf of the respondent No.3. It is submitted that the respective petitioners have not produced relevant record / evidence with regard to their property and residence and they have produced only indemnity bond, however, possession of the property was not established and therefore, as per the Circular of the Government, the petitioners are not entitled to claim benefit of the scheme. Therefore, it is requested to dismiss the present Special Civil Applications.

6. It is the contention on behalf of the petitioners that it is not that the petitioners have produced only an indemnity bond. However, according to the petitioners, they have produced indemnity bond, allotment letter, letters, affidavit, Rajachhithhi, tax receipts, GEB Bills and other demand bills and other receipts to establish their possession and ownership of the property in question. Still the same has not been considered by the respondent No.3 and the respondent No.3 has considered only indemnity bond. There is no reason to

disbelieve the same. Apart from that, the learned advocate appearing on behalf of the respective petitioners have shown their willingness to once again produce relevant documentary evidence to prove their possession and ownership of the property in question prior to earthquake i.e. 26th January, 2001.

7. Under the circumstances, the petitioners may produce the relevant necessary documentary evidence once again to prove and establish their possession and ownership of the property in question prior to 26.1.2001 within period of four weeks from today and on receipt of the same, the respondent No.3 is directed to consider the applications submitted by the petitioners afresh in accordance with law and on merits and considering the scheme of the State Government and to pass appropriate order within a period of three months thereafter. If the respondent No.3 is of the opinion that personal hearing is required, then, it will be open for the respondent No.3 to call upon respective petitioner personally and to verify the documentary evidence so as to satisfy with regard to ownership and possession of

the property of the petitioner in question prior to 26.1.2001.

8. In view of the above, the impugned orders dated 8.7.2004 rejecting the application submitted by the respective petitioners are hereby quashed and set aside and the matters are remanded to the concerned Deputy Collector for deciding the applications afresh in accordance with law and on merits.

9. Rule is made absolute to the aforesaid extent in each of the matter. However, there shall be no order as to costs.

Direct Service is permitted.

[M.R.Shah, J.]

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